

EX PARTE OR LATE FILED
SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

(202) 371-7000

FAX: (202) 393-5760

DIRECT MAIL
(202) 371-7230

RECEIVED

JUL 10 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 10, 1996

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEWARK
NEW YORK
SAN FRANCISCO
WILMINGTON
BEIJING
BRUSSELS
FRANKFURT
HANOI
HONG KONG
LONDON
MOSCOW
PARIS
PRAGUE
SYDNEY
TOKYO
TORONTO

BY HAND DELIVERY

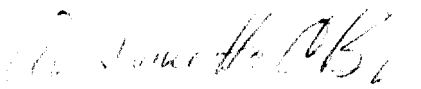
William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: **Notice of Written Ex Parte Presentation**
CC Docket No. 96-98

Dear Mr. Caton:

In accordance with Sections 1.1206(a)(1) and (a)(3) of the Commission's rules, attached hereto are two copies of a written presentation submitted by John Lenahan of Ameritech to John Nakahata on July 8, 1996.

Very truly yours,


Antoinette Cook Bush
Counsel for Ameritech

Attachment
cc: John Nakahata (w/attach.)

No. of Copies rec'd 04
List A B C D E

**Interconnection, Network Elements and
Access Charges
CC Docket No. 96-98**

RECEIVED

JUL 10 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Introduction

A significant issue raised by every party in this proceeding is the relationship between interconnection and access to unbundled network elements, pursuant to Sections 251(c)(2) and (c)(3) of the 1996 Act; and the resale of telecommunications services, pursuant to Section 251(c)(4). A second, equally contentious issue is the meaning of Sections 251(g) and (i), and whether interstate access charges can be applied if network elements acquired from incumbent LECs are used in the provision of interstate interexchange services. Finally, assuming existing access charges will apply until Part 69 access reform is implemented, how does the Commission ensure that incumbent LECs do not over-recover costs via Section 252 network element prices and Part 69 access charges.

Entry Options: Interconnection or Resale

The 1996 Act dramatically increases competitive entry opportunities by freeing new entrants from having to build facilities that duplicate incumbent LEC networks. The Act permits entry into local markets under two different strategies -- depending on the degree and deployment of local facilities a new entrant actually possesses or plans to construct. A competitor with local loops, local switches or local transport, such as a cable company, some interexchange carriers or CAPs, can enter relying on the interconnection, traffic termination and access to unbundled network element provisions of the 1996 Act.¹ In contrast, a new entrant without any local facilities is allowed to resell any of the incumbent LECs retail telecommunications services pursuant to Section 251(c)(4).

Viewed as a whole, the statutory scheme of Sections 251(b) and (c) enables entrants to use interconnection and unbundled network elements or resale in the manner that the entrant determines will advance its entry strategy most efficiently. As the Commission noted in its NPRM.

Section 251(c)(2) would permit a cable operator to interconnect its facilities with an incumbent LECs network. Section 251(c)(3) would enable a competitive access provider to combine its own switches and transport facilities with the incumbent LECs loops in order to serve end users. Section 251(c)(4) would enable a new firm to

¹ Sections 251(c)(2), (b)(5) and (c)(3).

enter a local market quickly and offer the incumbent LECs subscribers resold services while the entrant constructed its local facilities.²

The Commission's interpretation of either a facilities-based entrant interconnecting its network supplemented by unbundled network elements, or a non-facilities based entrant reselling services is supported by the statutory provisions in Sections 251(c)(2) and (c)(3). Congress did not intend interconnection and use of unbundled network elements to be a duplicative, alternate way to resell services in addition to Section 251(c)(4). Rather, interconnection is an alternative entry strategy, that is different and distinct from resale.

**Interconnection with a CLECs Network:
How much and what types of facilities are required**

Section 251(c)(2) imposes on incumbent LECs "the duty to provide for the facilities and equipment of any requesting carrier, interconnection with the local exchange carrier's network ... for the transmission and routing of telephone exchange service and exchange access."³ The fundamental concept of "interconnection" is the physical linkage of two networks. The Commission has noted that interconnection, required under Section 251(c)(2), ensures that a requesting carrier can "transmit telecommunications traffic between its network and the incumbent's network in a reliable and efficient manner."⁴

Although "network elements" are facilities or equipment, they are the facilities of the incumbent LEC, not of the requesting carrier. Interconnection, therefore, requires that the requesting carrier have some of its own facilities and equipment, in addition to any network elements it has access to pursuant to Section 251(c)(3). The legislative history supports the conclusion that an interconnecting carrier have its "own" facilities. For example, the House Conference Report in describing interconnection stated: "Section 242(b)(i) describes the specific terms and conditions for interconnection ... which are integral to a competing provider seeking to offer local telephone services over its own facilities." See House Report 104-204, Part I at pages 72-73.

As the Commission also correctly observes, "interconnection" as used in 251(c)(2) should refer only to the "facilities and equipment physically linking two networks and not to transport and termination services provided by

² See NPRM paragraph 15, Note 29.

³ Section 251(c)(2)(A). (emphasis added) See also Section 251(a)(1) that requires each telecommunications carrier to interconnect "with the facilities and equipment" of other telecommunications carriers.

⁴ NPRM at paragraph 49

such linking ..."⁵ This interpretation avoids overlap between Sections 251(b)(5) and 251(c)(2), and avoids inconsistency between 252(d)(1) and (d)(2).

The relationship between Sections 251(b)(5) and 251(c)(2) is also important to defining and quantifying the types of facilities and equipment a requesting carrier must possess to interconnect and terminate traffic. Section 251(c)(2)(A) refers to the requesting carrier's facilities and equipment for "transmission and routing." Section 251(b)(5), which applies to the requesting local exchange carrier and the incumbent, requires mutual arrangements for the "transport and termination of telecommunications," which in the case of Section 251 (c)(2) interconnection is limited to those who provide both "telephone exchange service and exchange access." Finally Section 252(d)(A)(i) makes it clear that two networks are involved. This Section permits "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."

Thus, these statutory provisions specify exactly what equipment/facilities are required: they must be equipment and facilities for (i) the transmission and (ii) routing of (iii) telephone exchange service and (iv) exchange access. That is, any carrier that seeks to recombine unbundled network elements and interconnect them with the incumbent LEC's network must have its own local loop transmission, local switching or local transport. The requesting carrier need not have all three, but it must have at least one of these network components sufficient to offer service to customers in the area it seeks to enter.⁶ If it does not, it does not comply with Section 251(c)(2)(A) and 251(b)(5).

Unbundled Network Elements: Supplements, not Substitutes

Purpose of Network Elements. As the Commission recognized, at least with respect to local exchange interconnection, the purpose of Section 251(c)(3) is to foster competition so that new entrants were not forced to purchase network elements they did not need, but could combine incumbent LEC network elements with their own facilities and equipment. The conferees recognized this critical function of Section 251(c)(3).

[I]t is unlikely that competitors will have a fully redundant network in place when they initially offer local service, because the investment necessary is so significant. Some facilities and capabilities ... will likely need to be obtained from the incumbent [LEC] as network

⁵ NPRM paragraph 54.

⁶ A signaling network, such as SS7, would not be sufficient on its own since signaling does not perform transmission

elements pursuant to new Section 251.” Joint Explanatory Statement at 148.⁷

Therefore, the purpose of Section 251(c)(3) was to provide new entrants with some, but not all of the facilities or equipment needed to enter the local market. It is for this reason that incumbent LECs are required to provide network elements “on an unbundled basis ... in a manner that allows requesting carriers to combine such element ...” Parties that argue that all network elements needed to provide a telecommunication service should be bundled together by the incumbent LEC ignore the plain language that requires “unbundled” network elements combined by the “requesting carrier.” As the Commission noted in the NPRM these terms should be interpreted as permitting requesting carriers to obtain a particular element’s functionality “separate from that of other functionalities or network elements.”⁸ These unbundling provisions in Section 251(c)(3) were not intended to substitute the resale provisions of Section 251(c)(4), but rather to permit requesting carriers to supplement their own facilities and equipment with unbundled network elements obtained from the incumbent LEC.

Required Unbundled Network Elements. As required by the 1996 Act, in determining what network elements must be made available under section 251(c)(3), the Commission must consider whether failure to provide access to the network element would impair the ability of the requesting carrier to provide the services that it seeks to offer. See Section 251(d)(2)(B). In the special case of network elements that are proprietary in nature, the requesting carrier further must demonstrate that the network element is necessary for the carrier to provide the services that it seeks to offer. See Section 251(d)(2)(A). Thus, Congress expressly provided that the simple characterization of something as a “network element” only begins the Commission’s analysis about whether the “element” shall be mandated to be provided upon request

As the comments and reply comments filed in this proceeding indicate, under the Commission’s implementing regulations, incumbent LECs should be required to provide the following network elements on an unbundled basis to any requesting telecommunications carrier: (1) local loop transmission from the main distributing frame (or its equivalent) to the network interface on the customer’s premises; (2) local transport; (3) local switching separate from transport, local loops, and other services; (4) System Signaling 7 (“SS7”) call set-up for routing and transmission of telecommunications traffic via the signal transfer point (“STP”); (5) 800 database used for call set-up and routing accessed through SS7; and (6) Line Information Database (“LIDB”) used for online billing verification for calling card calls accessed through SS7. The

⁷ NPRM paragraph 75, Note 103.

⁸ NPRM at para. 86, note 116

foregoing network elements are already being used to provide competing telecommunications services and are thus known to be technically feasible.⁹

Operational Interfaces. Operational interfaces are essential to promote viable competitive entry. To the extent technically feasible, incumbent LECs should implement operational interfaces that enable telecommunication providers the opportunity to provide reliable customer service. These operational interfaces should permit the exchange of information between the incumbent LEC and the requesting carrier with respect to ordering, trouble reporting and billing information. With operational interfaces in place it is unnecessary to require either carrier to provide the other carrier with direct access to the underlying systems or databases providing such functions.

Electronic operational interfaces are desirable where manual or paper processes would be burdensome. When provided, electronic interfaces can be limited to providing functionality and information directly related to the services or network elements provided by the incumbent LEC to the purchasing telecommunication carrier. The incumbent LEC is not required to provide electronic access to functionality and information that can be provided effectively through non-electronic means, or that could be obtained by the telecommunications carrier from another source. In addition, incumbent LECs will be allowed to recover the cost of interface implementation and operation from the services and network elements supported by such interfaces.

The ability to do business between multiple local exchange carriers and incumbent LECs dictates that these electronic interfaces adhere to national or industry-based standards where available. The telecommunications industry has the responsibility to develop its own standards through existing standard bodies such as ANSI. If an ANSI or other national or industry-based standard does exist, incumbent LECs have a duty to migrate over a reasonable period to provide electronic interfaces that comply with such standards. Absence of such standards does not release local exchange carriers of their responsibility to provide reasonable, non-discriminatory and open electronic interfaces to the extent technically feasible. Such electronic interfaces for ordering could use, for example, Electronic Data Interchange (EDI) transaction sets as defined by the

⁹ Operator Services and Directory Assistance ("OS/DA") are not network elements. They are services, not facilities or equipment. Section 251(b)(3) confirms Congress' intent that the unbundling provisions of Section 251(c)(3) would not apply to OS/DA. Section 251(b)(3) concerns dialing parity and, among other dialing parity requirements, it compels all LECs (not just ILECs) to "permit all such [competing] providers to have nondiscriminatory access to ... operator services, directory assistance, and directory listing, with no unreasonable dialing delays." (Emphasis added.) Plainly, Congress regarded OS/DA as services subject to dialing parity, not as a network elements subject to unbundled access. Indeed, if OS/DA were a network element, subject to the requirements of Section 251(c)(3), Section 251(b)(3) would be rendered nonsensical. Moreover, OS/DA services are available for resale pursuant to Section 251(b)(1) and 251(c)(4).

Telecommunications Industry Forum (TCIF) or the access service request (ASR) as defined by the Ordering and Billing Forum (OBF). Electronic interfaces for exchanging billing information, for example, could use Exchange Message Interface (EMI) and Exchange Message Record (EMR), also defined by OBF.”

Although it is premature to issue uniform national rules regarding wide-spread electronic bonding, the Commission encourages all telecommunications carriers to create electronic interfaces, that are open and standard, to exchange the information necessary for carriers to place orders, request or inquire regarding repair and maintenance status, and obtain information necessary for billing and collection. Likewise, implementation of electronic interfaces for ordering or other functions is not a condition precedent or requirement needed to meet the competitive checklist requirements of Section 271(c)(2)(B). However, when making its determination regarding in-region interLATA services relief under Section 271(d)(3), the Commission may take into account the extent to which the petitioning Bell operating company makes available or plans to provide open and non-discriminatory electronic interfaces to requesting telecommunications carriers.

Future Unbundled Network Elements. Because the telecommunications industry is marked by rapidly evolving technology, the federal minimum set of network elements should not be static. An evolving, non-static set of unbundled network elements reflects the realities of the industry and thus best implements the goal of promoting competition in the local segment of the telecommunications marketplace. Accordingly, the Commission should reserve the right to add to or modify this list in accordance with the changing needs of competing carriers.

Such flexibility, however, could be at odds with agreements arbitrated before any such addition to, or modification of, the federal minimum set of network elements. To accommodate the evolving nature of the federal minimum set of unbundled network elements, all agreements reached through arbitration should contain a clause that allows the requesting carrier to take advantage of any expansion of the federal minimum set, but does not allow either party to renegotiate the other terms of the agreement already entered into by the incumbent LEC and the requesting carrier.¹⁰ Parties should not be allowed to renegotiate the terms of the existing agreement because the only unresolved issues would be the specific terms and conditions pertaining to these additional network elements. See Section 252(b)(2). The following contract

¹⁰ As recognized in the *NPRM*, agreements reached through voluntary negotiations do not have to meet the requirements of section 251 or the Commission's implementing regulations. See *NPRM* paragraph 78; see also 47 U.S.C. 252(e)(2)(A). Nevertheless, such an approach would encourage early negotiation facilitating the use of such agreements in complying with Section 271 requirements in the event the Commission's rules changed or were expanded.

language would be acceptable for achieving this result: In addition to the specific network elements required to be made available by incumbent LEC's on an unbundled basis pursuant to the Commission's regulations in effect as of the date of this agreement, [Incumbent LEC] shall provide to [Requesting Carrier] nondiscriminatory access, on an unbundled basis, to any additional network elements hereinafter required by the Federal Communications Commission as part of the federal minimum set of unbundled network elements, the listing of which is periodically published in the *Federal Register*, upon terms and conditions arrived at through the procedures set forth in Section 252 of the Telecommunications Act of 1996.¹¹

Relationship of Sections 251(c)(2), (c)(3), and (c)(4).

Scenario 1: *Access to unbundled network elements for the purpose of avoiding access charges.* Although virtually every party to this proceeding recognizes that access charge reform is overdue, until such reform occurs, IXCs may not purchase unbundled network elements for the purpose of avoiding access charges. To conclude otherwise would be inconsistent with sections 251(i) and 251(g) and would effect a fundamental jurisdictional shift not contemplated by Congress. Indeed, the Commission in the *NPRM* recognizes that IXCs cannot obtain access to an unbundled network element pursuant to section 251(c)(3) for the sole purpose of avoiding access charges.

Scenario 2: *Re-combining network elements to provide only exchange access.* Although section 251(c)(3) specifically provides that unbundled network elements should be provided "in a manner that allows requesting carriers to recombine such elements in order to provide... such telecommunication service," requesting carriers cannot combine network elements to provide only exchange access. In order to provide exchange access, the carrier must also interconnect with the incumbent LEC's local network. Interconnection pursuant to section 251(c)(2) is available only if the facilities end equipment of the requesting carrier will be providing both "telephone exchange service and exchange access." (emphasis added). See Section 251(c)(2)(A).

Scenario 3: *Re-combining network elements to provide telephone exchange service and exchange access.* Section 251(c)(3) does not provide new entrants with an alternative way to "resell" incumbent LEC telecommunications services provided at retail. Requesting carriers therefore cannot avoid access charges by simply re-combining unbundled network elements to provide telephone exchange service and exchange access.

¹¹Alternatively, the specific terms and conditions associated with any network elements added to the federal minimum set could be agreed upon pursuant to a bona fide request process that complies with the timetable set forth in section 252

Because telephone exchange service and exchange access are already offered by incumbent LECs for resale, denying access to unbundled network elements for this purpose would not impair the ability of the requesting carrier to provide local service. See Section 251(d)(2). Moreover, allowing interexchange carriers to combine network elements simply to provide services already offered for resale would vitiate the section 271(3)(1) joint marketing restriction. See NPRM n. 113.

Incumbent LECs, however, could attempt to circumvent the section 251(c)(3) obligation by claiming that every element requested is a telecommunications service already offered for resale. Determining which telecommunications services have been made available for resale by an incumbent LEC as of a particular date appears to be the most effective means of balancing these competing concerns. The Commissions' implementing regulations therefore should provide that all telecommunications services offered by an incumbent LEC as of February 7, 1996 -- the day prior to the enactment of the Telecommunications Act of 1996 -- will not be considered network elements. Telecommunications services first offered for service after that date will not be a network element, unless there is evidence demonstrating that the incumbent LEC is using this classification to evade the obligation to provide unbundled network elements.

Scenario 4: *Combining network elements with some of the requesting carrier's own facilities.* Carriers requesting not only network elements from the incumbent LEC, but also interconnection of such network elements obtained from the incumbent LEC, must themselves have some facilities and equipment. As a practical matter, if the requesting carrier has its own loop, it could combine that with switching or transport obtained from the incumbent LEC. If it has its own switching, it can combine that with local loop transmission or local transport obtained on an unbundled basis from the incumbent LEC. Finally, if the requesting carrier has its own local transport connecting the incumbent LEC's end offices (i.e., interoffice trunking), it can combine such transport with local loop transmission and switching obtained from the incumbent LEC.

If, however, the requesting carrier has only transport connecting its point-of-presence ("POP") to the incumbent LEC's end office, it would not be entitled to combine that limited transport with the unbundled switching, local loop transmission, and local transport obtained from the incumbent LEC. Such limited transport does not satisfy the requirement of Section 251(c)(2)(a) with request to what types of facilities/equipment are required for interconnection under section 251. Moreover, this carrier's ability to provide local telephone exchange service and exchange access would not be impaired if it were denied access to these unbundled network elements -- local loop transmission, local switching, and local transport (i.e., interoffice trunking) -- because these network elements collectively constitute local telephone exchange service, which is available for

resale at wholesale rates. Finally, requiring this carrier to compete via resale in no way forces the carrier to pay for any service or element that it does not need because this carrier has none of its own facilities or equipment that comprise local service.

Access Charges Remain

As the Commission has recognized, Section 251 did not repeal the existing Part 69 access charge regime. The Act explicitly retains the prevailing access charge regime established by the Commission. Specifically, Section 251(g) provides that:

each local exchange carrier ... shall provide exchange access ... and exchange services for such access to interexchange carriers ... in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of [the Act] under any court order, consent decree, or regulation, order or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.¹²

Thus, the interexchange carriers position, which would effectively nullify the current switched access rules, is flatly contrary to Section 251(g). Established principles of statutory construction counsel against reading Section 251(c)(3) in a manner that would conflict with the clear dictates of Section 251(g). See California v. American Stores Co., 495 U.S. 271, 284 (1990) (interpreting specific statutory provision "to harmonize [it] with its statutory context"); Kotteakos v. United States, 328 U.S. 750, 775 (1946) ("[t]he two sections must be construed and applied so as to bring them into substantial harmony, not into square conflict").

Likewise, Section 251(i) provides that "[n]othing in this section [251] shall be construed to limit or otherwise affect the Commission's authority under

¹² Section 251(k) of the Senate bill provided that "[n]othing in this section shall affect the Commission's interexchange-to-local exchange access charge rules for local exchange carriers or interexchange carriers in effect on the date of enactment of the [Act]." In reconciling the House and Senate bills, the Conference incorporated this provision into Section 251(g) of the Acts which incorporated other telecommunications policies that would survive passage of the Act. Because the 1996 Act eliminates prospectively the AT&T and GTE consent decrees, the more narrow language of Section 251(k) of the Senate Bill was incorporated into the broader scope of equal access obligations addressed in Section 251(g) to include "any court order, consent decree or regulation, order or policy of the Commission..." Part 69 access charges are regulations of the Commission and, therefore, within the scope of this broader listing in Section 251(g).

section 201.” Again, like Section 251(g), Section 251(i) incorporates the intent of Section 251(k) of the Senate Bill. The Committee Report on Senate Bill 652 noted that: “New subsection 251(k) provides that nothing in section 251 is intended to change or modify the FCC’s rules at 47 C.F.R 69 et. seq. ... The Committee does not intend that Section 251 should affect regulations implemented under section 201 with respect to interconnection between interconnection between interexchange carriers and local exchange carriers.” See Senate Report 104-23 at page 22. If Section 251(c)(3) were read to permit IXCs to combine unbundled network elements in a manner replicating switched access, the practical effect would not only be to “limit” or “affect” the Commission’s Section 201 authority over switched access,¹³ but to nullify it. At the same time such a position would have the practical effect of granting jurisdiction over exchange access for IXC traffic to the State commissions, as the State commissions will conduct arbitration and agreement review proceedings under Section 252. This, of course, effectively would divest the Commission’s authority over the origination and termination of interstate calls. Accordingly, the interexchange’s position on switched access is also directly contrary to Section 251(i).

The legislative history of the Act confirms this reading of the Act. As explained by the Conference Report, the purpose of Section 251(g) was to retain the existing switched access regime until the Commission addresses access charge reform and promulgates new regulations. See Conference Report on S. 652, 142 Cong. Rec. H1078, H1110 (Jan. 31, 1996) (“In the regulations under this section, the substance of th[e] new statutory duty [imposed by Section 251(g)] shall be the equal access and nondiscrimination restrictions and obligations, including receipt of compensation, that applied to the local exchange carrier immediately prior to the date of enactment, regardless of the source”). See also Senate Report at 19 (“[t]he obligations and procedures prescribed in this section [Section 251] do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under section 201 of the 1934 Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the FCC’s access charge rules”).

“Net” Access Charges During the Transition

A requesting carrier that has its own loop, local switching, or local transport can (i) interconnect with the incumbent LEC pursuant to section 251(c)(2), (ii) can purchase unbundled network elements pursuant to section 251(c)(3), and (iii) can recombine these unbundled network elements in anyway that it sees fit. Until, however, the Commission reforms access charges,

¹³ The Commission’s authority over switched access derives from Section 201. See 47 C.F.R. § 69.1.

whenever a carrier uses an unbundled network element obtained from the incumbent LEC to perform a function subject to switched access charges, it must pay the applicable access charge and the cost-based Section 252(d) rate for the network element(s), provided there is no double recovery of relevant interstate costs.

There are two basic approaches to avoid a double recovery of interstate costs. The most direct approach, and the one most consistent with the Commission's jurisdictional authority, is to direct State commissions to exclude interstate costs in determining Section 252(d) prices for network elements. This option "nets" the Section 252 network element charges to remove interstate costs. For local loops priced under Section 252(d), the incumbent LEC would be required to exclude 25 percent of the loop cost that would have been allocated to the interstate jurisdiction. Additionally, the incumbent LEC would collect the end user common line charge from the requesting carrier seeking Section 251(c)(2) interconnection. For unbundled switching, the Section 252(d)(1) price would be reduced by removing the costs that would be allocated to the interstate jurisdiction using the incumbent LECs then existing separations factor for central office equipment.

Another approach to avoid over-recovery by the incumbent LECs during the transitional period that the Commission reforms access charges, is to remove from Part 69 access charges any interstate costs that were included in Section 252(d)(1) network element prices. This would be required if the pricing principles established pursuant to Section 251(d) did not recognize any jurisdictional distinctions, but were based on unseparated costs. After removing from Part 69 access charges the "interstate" portion of the costs included in the relevant Section 252(d) price, the competing carrier would still pay "net" access charges that would include carrier common line charges and transport interconnect charges. Because these charges are designed to further telecommunications policies, including universal service and network investment, distinct from the policy of facilitating local competition, incumbent LEC's should be allowed to collect these charges until explicit mechanisms for supporting these policies are implemented.

In addition to either of the above approaches, the Commission will allow incumbent LECs to file transitional waivers to use different methods for assessing certain categories of interstate access charges. Such different methods could include "bulk billing" all interexchange carriers on a competitively neutral basis, such as: total interstate switched access minutes of use that originate or terminate through the incumbent LECs or any IXCs switch, or the interexchange carrier's relative share of presubscribed subscriber lines within the waiver area. The categories of charges that could be included in such waivers, include: NECA long-term support, common line, transport interconnection charges and other universal service and carrier-of-last resort implicit subsidies

embedded in interstate access charges. Effective with bulk billing, such incumbent LEC's access charges would be reduced accordingly. These arrangements should be flexible and should remain in place until superseded by implementation of broader access charge reform.

Compensation Must Reflect the Type of Traffic

When Section 251(c)(2) interconnection is implemented three distinct types of traffic will be delivered from one network to another: local traffic, IntraLATA toll traffic and traffic destined for an interexchange carrier ("meet point billing traffic"). The Commission's interconnection rules must be flexible to permit the proper routing and rating of each traffic type.

For example, "meet point billing traffic" requires a separate trunk from Local and IntraLATA traffic. This is because certain information (including the CIC code) must be delivered on these trunks. This information cannot be transmitted from one Feature Group D trunk (the trunks traditionally used to deliver IXC traffic) to another, so incumbent LECs and requesting carriers should be permitted to use a specialized trunk, called a Toll Connecting Trunk (TCT) to deliver this traffic without losing the CIC information.

Local and IntraLATA traffic may be delivered on combined trunks, if each carrier passes information that allows the other to identify the type of call (local or intraLATA). That information is Calling Party Number or CPN. The CPN allows each carrier to determine whether the call is a local or intraLATA call. This is required because different rates of compensation apply to local and intraLATA toll calls. There may still be some calls on which CPN may not be delivered; in that case, a percent local usage factor, based on the calls on which CPN is delivered, should be used. If CPN is not passed at all (or on an insufficient number of calls), then separate trunks groups could be used so that the traffic may be rated properly.

The Commission should also permit the use of either 1-way or 2-way trunks. One way trunks, as their name implies, deliver traffic in only one direction, from the originating carrier to the terminating carrier. Two way trunks, on the other hand, deliver calls in both directions. Where 1-way trunks are used, each carrier puts in the number of trunks it deems necessary. With 2-way trunks, the parties must agree on the number of trunks to be used, and they must agree on the engineering parameters to which the trunks will be engineered, which are largely governed by industry standards: number of trunks are based on trunking tables (e.g. Wilkinson trunk tables); engineering parameters are based on established blocking factors, etc. (e.g. P.01 grade of service standards).

Based on these trunking arrangements, the incumbent LEC and the interconnecting local exchange carrier will be able to assess to each other the proper compensation based on the type of traffic. For local service, the parties compensate each other based on the reciprocal compensation rate agreed to by the parties pursuant to Section 251(b)(5) and Section 252(d)(2). For intraLATA toll service, the parties compensate each other at their respective intrastate switched access rates in their tariffs.¹⁴ For meet point billing, the parties bill the interexchange carrier to which the traffic is delivered at their respective switched access rates for the agreed upon functions performed. For example, if one carrier provides tandem switching and one-half the transport, it will bill those elements of its switched access tariff to the IXC. If the other carrier is providing local switching and one-half the transport, it will bill those elements of its switched access tariff to the IXC.

In short, Section 251(c)(3) network elements are intended to facilitate the development of local competition. Thus unbundled elements should be limited to this purpose; they should not be available to avoid access charges. In other words, the nature of the traffic, not the type of carrier which is offering or receiving the traffic, determines the applicable charge.

Section 271 Implications

The section 271 competitive checklist for BOC in-region entry cross-references certain requirements of section 251. The Commission therefore should clarify that any agreement or statement in which a BOC agrees to make available the federal minimum set of network elements described above, and which also contains a mechanism whereby a requesting telecommunications carrier may take advantage of any additions to this federal minimum set, will satisfy the competitive checklist requirement to provide nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3). Such a clarification would serve the Commission's goal of encouraging negotiated interconnection agreements. Finally, to the extent carriers are allowed to use unbundled network elements, in combination with their own facilities, to provide telephone exchange service, such entry would constitute the presence of a facilities-based competitor for purposes of section 271. In such case, use of network elements would be considered the requesting carrier's facilities for purposes of section 271(c)(1)(A)

¹⁴ The distinction between local and intraLATA for purposes of inter-carrier compensation is as provided by each state commission. Each state defines the difference between local and intraLATA toll in either an order (e.g., when intraLATA presumption is ordered), in state regulations, or in statute. These distinctions, however, do not affect how each carrier treats its customers' calls: each carrier is free, subject to applicable rules, to classify its customers' calls as local or intraLATA regardless of how those calls are treated for purposes of inter-carrier compensation.